In the High Court of Judicature at Madras

Dated: 25/03/2004

Coram

The Hon'ble Mrs.Justice R.BANUMATHI

Criminal Appeal No.368 of 1997

State by
Inspector of Plantation,
Othagamandalam, rep. by
Public Prosecutor,
High Court, Madras. ..Appellant

-Vs-

T.K.Beema Gowder ..Respondent

Criminal Appeal filed under Section 378 of Criminal Procedure Code against the judgment dated 29.08.1996 made in S.T.C.No.1004 of 1994 on the file of Judicial Magistrate Court, Kothagiri.

!For Appellant : Mr.Abudu Kumar Rajarathinam,
Govt.Advocate (Criminal Side)

^For Respondent : Mr.Kumaresan for
Mr.Subbarayan

:J U D G M E N T

This Appeal arises out of acquittal in STC.No.1004/1994 on the file of Judicial Magistrate, Kothagiri acquitting Respondent / accused for the violations of R.27(1) r/w.28, R.27(2) r/w.28, R.27(5) r/w.28, R.27(6) r/w.28 of Minimum Wages Act.

2. Relevant facts necessitated for disposal of this Appeal could briefly be stated thus:-
Complainant / Inspector of Plantations had inspected a Tea Garden measuring about 18 acres called "Naragiri Estate" on 22.06.1994 - 3.45 PM. Complainant / P.W.1 noted the following violations:

Provisions of Minimum Wages Act
Violation of
Rule 27(1) r/w.R.28
Register of Wages to be maintained by every employer.
Rule 27(2) r/w.R.28
Wage slips containing the aforesaid particulars to be issued to every person

employed by him.
Rule 27(5) r/w.R.28
Maintenance of Muster Roll by every employer at the work spot.
Rule 27(6) r/w.R.28
Register of Employees to be maintained by the employer at the work spot or Principal Office attached to it.

3. Complainant / P.W.1 prepared Ex.P.1 - Inspection Report. Ex.P.2 - Notice was sent to the accused. The accused sent Ex.P.3 - Reply dated 20.07.1994, in which the accused claimed that he owns only 6.50 acres (not 18 acres as stated by the Complainant), and that accused is entitled to be protected under the LABOUR LAWS (EXEMPTION FROM FURNISHING RETURNS AND MAINTAINING REGISTERS BY CERTAIN ESTABLISHMENTS ACT, 1988 (Act 51 of 1988) since the accused owns his property as " Very Small Establishment" and the accused did not employ more than 9 persons but only less than 9 persons. Explanation by the accused was not satisfactory. Hence, the Complainant has sought for sanction to prosecute the accused for violation of the Rules under Minimum Wages Act. Deputy Commissioner of Labour, Coimbatore has considered the materials placed before him and granted Ex.P.10 - Sanction Order for prosecuting the accused. Thereafter, Ex.P.11 - Complaint was filed against the Respondent / accused.

4. To substantiate the charges against the accused, in the trial court, P.W.1 - Inspector of Plantations was examined. Exs.P-1 to P-11 are marked. Onbehalf of the accused, Exs.D-1 to D-4 are marked. During the trial also, the Respondent / accused claimed benefit of LABOUR LAWS (EXEMPTION FROM FURNISHING RETURNS AND MAINTAINING REGISTERS BY CERTAIN ESTABLISHMENTS ACT, 1988 (Act 51 of 1988) and that his Estate is only a "Very small Establishment" which has employed less than 9 persons.

5. Upon consideration of the evidence, the trial court accepted the contention of the accused that Naragiri Estate owned by the accused is a "Very small Establishment" within the meaning of Sec.2(f) of LABOUR LAWS (EXEMPTION FROM FURNISHING RETURNS AND MAINTAINING REGISTERS BY CERTAIN ESTABLISHMENTS ACT, 1988 (Act 51 of 1988)(hereinafter referred to 'Act 51 of 1988'). Finding that the accused has employed less than 9 persons and that under the provisions of Act 51 of 1988 the accused is exempted from furnishing returns and maintaining registers, the trial court found that the maintenance of registers as required under R.27(1), 27(2), 27(5) and 27(6) of Minimum Wages (Tamil Nadu) Rules is exempted and that there is no violation of the provisions of Minimum Wages Act and on those reasonings, the trial court acquitted the Respondent / accused.

6. Aggrieved over the acquittal, State has come forward with this Appeal.

7. Assailing the findings of the trial court, the learned Government Advocate (Criminal Side) has taken me through Sec.4 of Act 51 of 19 88 and the proviso thereon and Secs.18 and 30 of Minimum Wages Act and contended that Minimum Wages Act is certainly applicable even in cases of "Very small establishment". It is further submitted that the number of persons employed

is no criteria for applicability of Minimum Wages Act and that the trial court erred in adopting of narrow interpretation to the provisions of Minimum Wages Act and the finding of the trial court exempting the Plantation / Naragiri Estate from the purview of Minimum Wages Act suffers from serious and substantial error warranting interference.

8. Reiterating the exemption under the Act 51 of 1988, the learned counsel for the Respondent / accused has submitted that the Complainant has not produced materials showing the actual extent (18 acres) owned by the Respondent / accused. Contending that the accused owns only 6.50 acres of Plantation, which is a "Very small establishment" falling within the meaning of Sec.2(f) of Act 51 of 1988, the trial court rightly acquitted the accused and that there is no reason warranting interference in the judgment of the trial court.

9. Upon careful reassessment of the evidence and materials on record, impugned judgment and the reasonings for acquittal and submissions of both sides, the following common points arise for consideration in this Appeal:
(1) Whether the trial court was right in finding that the provisions of Minimum Wages Act is not applicable to a "Very small Establishment" as defined in Sec.2(f) of LABOUR LAWS (EXEMPTION FROM FURNISHING RETURNS AND MAINTAINING REGISTERS BY CERTAIN ESTABLISHMENTS ACT, 1988 (Act 51 of 1988)?
(2) Whether the Plantation - Naragiri Estate would come within the purview of Minimum Wages Act?
(3) Whether the impugned judgment and reasonings of the trial court acquitting the Respondent / accused suffer from serious and substantial error warranting interference ?

10. There could be no denying that the Plantation - "Naragiri Estate" was inspected on 22.06.1994 by P.W.1 - Inspector of Plantations. Ex.P.2 - Notice was sent to the accused and the accused has sent his Reply Ex.P-3. Since the explanation was not satisfactory, after obtaining sanction (Ex.P-10) from the Deputy Commissioner of Labour, Coimbatore, Complaint was filed against the accused. During the trial, the accused mainly raised two contentions;
(i) that he owns only 6.50 acres and not 18 acres and is a "Very small Establishment" falling within the meaning of Sec.2(f) of Act 51 of 1988;
(ii) Naragiri Estate is a "Very small Establishment" employed less than 9 persons and is exempted under the provisions of the Act 51 of 19 88.

11. The trial court seems to have virtually accepted the contentions of the accused and imported the provisions of Act 51 of 1988 to the Minimum Wages Act. When the reported violations arise under Minimum Wages (Tamil Nadu) Rules, the approach of the trial court in invoking Act 51 of 1988 is totally erroneous. Nextly, even if the provisions of Act 51 of 1988 are to be imported, even in cases of "Very small establishment", the operation of provisions of Minimum Wages Act and the duty cast upon the employer to maintain the registers is not at all excluded.

12. Even at the outset, it is to be pointed out that violations are under Rule 27 of the Minimum Wages (Tamil Nadu) Rules 1953. Rule 27

contemplates - maintenance of registers; wage slips; muster roll; register of employees at the work spot by every employer. For applicability of the provisions of Minimum Wages Act, the only criteria is that it should be a Scheduled employment as covered under THE SCHEDULE.
....Employment in any plantation, that is to say, any estate which is maintained for the purpose of growing cinchona, rubber, tea or coffee.
It is a Scheduled employment and added in Part.I of the Scheduled employment as per Sec.2(g) and Sec.27 of the Minimum Wages Act, 1948. For the employment in Tea Estate, the Minimum Wages have been fixed in G.O.Ms.No.1171 Labour and Employment dated 11.06.1985. Once employment in Tea Plantation for which minimum wages is also fixed, the Tea Plantation is bound to maintain the registers contemplated under Rule 2 7 of Minimum Wages (Tamil Nadu) Rules.

13. Rules and Regulations framed under various Labour Laws provide for maintenance of registers in prescribed forms and periodical submission of returns in prescribed forms. Considering the persistent demands from small business and industrial establishments and for the purpose of simplification and reduction in the number of forms and registers required to be maintained with a view to provide certain exemption to the small establishments, LABOUR LAWS (EXEMPTION FROM FURNISHING RETURNS AND MAINTAINING REGISTERS BY CERTAIN ESTABLISHMENTS ACT, 1 988 (Act 51 of 1988) was enacted. Sec.2(f) of Act 51 of 1988 defines "Very small establishment" as
"Very small establishment" means establishment in which not more than nine persons are employed or were employed on any day of the preceding twelve months.
At the time of inspection in Naragiri Estate, 8 woman workers were found to be working. Therefore, the trial court appears to have freely applied Sec.2(f) of Act 51 of 1988 not keeping in view that under the Minimum Wages Act, the number of employees is not the criteria. But the only criteria is the employment in Scheduled Employment.

14. We may further elucidate this aspect by referring to Sec.2(e) and 2(g) of Minimum Wages Act. 2(e) defines "Employer".
"Employer" means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes...
2 (g) defines Scheduled employment.
"Scheduled employment" means an employment specified in Schedule, or any process or branch of work forming part of such employment.

15. By a combined reading of Sec.2(e) and Sec.(g) of Minimum Wages Act, it is clear that the provisions of Minimum Wages Act would be applied in the instances;
(i) one or more persons are employed;
(ii) the employment is the scheduled employment specified in the schedule.
The Tea Plantation being scheduled employment and where there was employment of more than one person is sufficient to invoke the provisions of Minimum Wages Act. While so, the trial court erred in finding that the Minimum Wages Act is not applicable to a "Very small establishment".

16. In fact, this is made clear even in Act 51 of 1988 in the proviso to Sec.4 of the Act, which exempts the Very small establishment from returns and registers required under certain Labour Laws. For better understanding, it is necessary to refer to Sec.4 with the proviso thereon.

4. Exemption from returns and registers required under certain labour laws:-(1) On and from the commencement of this Act, it shall not be necessary for an employer in relation to any small establishment or "Very small establishment to which a Scheduled Act applies to furnish the returns or to maintain the registers required to be furnished or maintained under that Scheduled Act:

Provided that such employer-

(a) furnishes, in lieu of such returns, a Core Return in Form A;

(b) maintains, in lieu of such registers,-

(i) registers in Form B, Form C and Form D, in the case of small establishments; and

(ii) register in Form E, in the case of "Very small establishment;

Provided further that every such employer shall continue to-

(a) issue wage slips in the Form prescribed in the Minimum Wages (Central) Rules, 1950 made under sections 18 and 30 of the Minimum Wages Act, 1948 and slips relating to measurement of the amount of work done by piece-rated workers required to be issued under the Payment of Wages (Mines) Rules, 1956 made under sections 13-A and 26 of the Payment of Wages Act, 1936; and

(b) file returns relating to accidents under sections 88 and 88-A of the Factories Act, 1948 and sections 32-A and 32-B of the Plantations Labour Act, 1951.

From the foregoing section, it is clear that Minimum Wages Act is applicable even in cases of "Very small establishment" and the employer is bound to maintain the registers required to be maintained under Rule 27.

17. The reasoning of the trial court exempting Naragiri Estate from the purview of Minimum Wages Act suffers from serious and substantial error and cannot be allowed to stand. The erroneous approach adopted by the trial court importing the provisions of Act 51 of 1988 to the Minimum Wages Act, has resulted in a positive miscarriage of justice. If the judgment is allowed to stand, it would set a wrong precedent giving immunity to all Tea Plantations which has employed less than 9 persons. In that view of the matter, the order of acquittal is to be necessarily set aside. While reversing the order of acquittal, this Court cannot straight consider guilt or otherwise of the Respondent / accused since the Trial Magistrate has not gone into the various factual aspects raised by the Respondent / accused.

18. The Respondent / accused has raised the factual contentions;

(i) that he owns only 6.50 acres and not 18 acres;

(ii)that wage slips were already issued which would be available with the employees;

(3)the contradictions relating to the month of non-compliance of provisions;

The trial court acquitted on the only ground that Naragiri Estate is a "Very small establishment" exempted from maintenance of registers. These factual aspects were not considered by the trial court. Hence, the matter is to be remitted back to the trial court for considering the matter afresh on the factual aspects.

19. It is held that Minimum Wages Act is applicable to the Tea Plantation which is a Scheduled employment added in Part-I as per Sec.2(g) and Sec.27 of Minimum Wages Act. It is further held that Minimum Wages Act is applicable to the Naragiri Estate owned by the Respondent accused. The order of acquittal is set aside and the matter is remitted back to the trial court for considering the matter afresh on the factual aspects.

20. Therefore, the judgment of Judicial Magistrate, Kothagiri in S.T.C.No.1004/1995 (dated 29.08.1996) acquitting the Respondent / accused under R.27(1) r/w.R.28, R.27(2) r/w.R.28, R.27(5) r/w.R.28, R.27 (6) r/w.R.28 of the Minimum Wages Act is set aside and this Appeal is allowed. The matter is remitted back to the trial court for de novo trial. The trial court is directed to restore STC No.1004/1995 to file and further directed to send notice to both parties to cause their appearance and expeditiously dispose the matter in the light of the above findings and in accordance with law. Both parties are directed to cooperate with the trial court for speedy disposal of the case.

Index:Yes.
Internet :Yes.

gl

To

1. The Judicial Magistrate,
Kothagiri,
The Nilgiris District.

2. The Chief Judicial Magistrate,
Ootacamund.

3. The Inspector of Plantation Industries,
The Nilgiris District.

4. The Public Prosecutor,
High Court, Madras.

□